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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/580,671	05/26/2000	Anthony A. Shah-Nazaroff	042390.P6484D1	9195

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EXAMINER

BUI, KIEU OANH T

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/580,671	Applicant(s) SHAH-NAZAROFF ET AL.	
	Examiner KIEU-OANH T. BUI	Art Unit 2611	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-37.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Please see the attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Krista Bui
Primary Examiner
Art Unit: 2611

Response to After Final Arguments

Applicant's arguments filed on 10/27/04 and 09/01/05 have been fully considered but they are not persuasive.

Applicants argue that Hendricks does not teach or suggest the “upgraded media features” associated with each entertainment program. The Examiner disagrees because it is well known in the art and based on the Examiner’s actual experience through subscription to cable services and personal knowledge, that the television and cable services offer to the user for at least a substantial same number of channels either in analog or digital services, for example (every one knows), a CNN channel providing in analog for a less fee might be also offered in a standard digital service or HDTV for an enhanced feature (video and sound) for a relatively more expensive fee for better enjoying in visual and sound effects, please refer to Figs. 31a & 31b and col. 38/line 43 to col. 39/line 8 for HDTV. Hendricks further offers interactive services and other special services, refer to col. 31/lines 30-65 & col. 41/line 15 to col. 42/line 58, as well as offering the user a chance to record it, refer to col. 38/lines 12-34. Hendricks further offers to the user digital audio as CD quality while using the television, refer to Figs. 35a-35e and col. 43/lines 30-58.

This was an exact paragraph from the previous final office action. There was no word, not at all, in the previous paragraph, that the examiner called it “an official notice”. The applicant’s representative is in clear mistake in imposing the above paragraph was the official notice from the examiner or the so-called “attempt to take Official Notice”, and he accused the examiner that how come it is necessary to do so and ask the examiner to provide for clarification and request for document and so on. There is absolutely no need or no obligation to do so. This

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was simply a further explanation and a helpful hint from the examiner to guide the applicant's representative in a better way to draft a better new claims IF (emphasized) he would like the claims in a condition for allowance. If not, as the situation appears as it is now, the examiner gives no further comments and is willing to support her statements with the disclosure and teaching of Hendricks at a later time, with no need to address the so called "attempt to take Official Notice", if the applicant's representative prefers to have an appeal brief at that later time.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., interactive effects, surround sound, etc., and selling Titanic with or without surround sound and the right to record it) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Therefore, the Examiner respectfully disagrees with the Applicants' arguments and stands with the disclosure and teaching of Hendricks as disclosed in details in the previous office action and discussed in this argument.



Kieu-Oanh Bui
Primary Examiner
Art Unit 2611

KB
Sept. 20, 2005